ENRIQUEZ *v.* ENRIQUEZ.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 24. Argued October 31, 1911.—Decided December 4, 1911.

Under § 10 of the act of July 1, 1902, c. 1369, 32 Stat. 695, this court can only review judgments of the Supreme Court of the Philippine Islands where the value in controversy exceeds $25,000; and where only a half interest of property is affected, jurisdiction does not exist unless the value of such half interest exceeds that amount.

An affidavit that the value of the real property involved in the action exceeds $25,000 is not sufficient to confer jurisdiction where only a one-half interest is affected and the context of the affidavit gives rise to the inference that the statements as to value relate to the entire property and not to a half interest therein.

In this case resort to the record shows that the value of the interest in the property affected is less than the jurisdictional amount.

THE facts, which involve the jurisdiction of this court of appeals from the Supreme Court of the Philippine Islands, are stated in the opinion.

Mr. Jackson H. Ralston, with whom *Mr. Frederick L. Siddons* and *Mr. Wm. E. Richardson* were on the brief, for appellants.

Mr. Allison D. Gibbs, for appellees, submitted.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Rafael Enriquez, as administrator of the estate of his father, Antonio Enriquez, and as his heir, joined by other children and a grandchild of the deceased also suing as heirs, who were plaintiffs below and are appellants here, sued to set aside a purported conveyance of a piece of real estate in the city of Manila made by the deceased to his daughter-in-law, Carmen, the wife of a son Francisco, who were defendants below and are appellees here. The case as ultimately presented to the court of first instance involved two questions: First, whether the assailed conveyance was forged, and if real, whether Antonio had mental capacity to execute it; and, second, if the sale was real and the mental capacity obtained, was one-half the property embraced by the deed beyond the dispositive power of Antonio because such half belonged to the estate of his deceased wife, as an acquet of the community which had existed between husband and wife. The court of first instance held that the sale was real and that there was mental capacity. It, however, decided that one undivided half of the property belonged, not to Antonio, but to his wife in virtue of her community interest, and vested on her death in her heirs. To that extent the sale was set aside and judgment was directed for 13,250 pesos as the gross value of the use of the one undivided half of the property during the time it was unlawfully retained. This sum, however, was held to be reducible by the amount of one-half of the expenditures made for the whole property, including repairs, improvements, etc., and the defendant Carmen Enriquez was ordered to forthwith make a statement of such expenditures for the purpose of an appropriate reduction in the allowance made for rents and profits. The defendants alone appealed.

In disposing of the appeal the Supreme Court said:

"The plaintiffs in this Court have neither assigned as errors the rulings made against them by the lower court nor have they discussed any such rulings in their brief. So much of the decision, therefore, as is adverse to the plaintiffs we cannot consider, and the questions to be resolved are those presented by the appeal of the defendants."

Confining itself, therefore, to the question of the existence of the community the court decided that the court below had erred on that subject, and its judgment was accordingly reversed. The court concluded its opinion as follows:

"The judgment of the court below, which rests solely upon the proposition that at the time of the death of Dona Ciriaca Villanueva one-half of this property passed to her heirs, cannot, therefore, be sustained. That judgment is reversed, without costs to either party in this court, and judgment is entered acquitting the defendants of the complaint, with the costs of the first instance against the plaintiffs."

This appeal was prosecuted. The assignments of error are solely directed to the conclusion of the court below concerning the non-existence of the community interest, and the grounds of complaint on this subject have been elaborately pressed at bar, both orally and in printed argument. We are of opinion, however, that we may not consider the subject, as we conclude that a motion made to dismiss the appeal on the ground of the absence of the requisite jurisdictional amount must prevail.

The act of July 1, 1902, c. 1369, § 10, 32 Stat. 695, authorizes us to review judgments or decrees of the Supreme Court of the Philippine Islands "in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other

competent witnesses, is involved or brought in question; . . . ."

Evidently, in consequence of these requirements of the statute, there was filed with the assignments of error in the court below an affidavit of Rafael Enriquez, stating in general terms "that the real property, the title to and possession of which is involved therein (in the action), exceeds in value the sum of twenty-five thousand dollars gold coin of the United States." But even if the sum thus stated were to be accepted for the purpose of testing the existence of the requisite jurisdictional amount, the affidavit would be inadequate, since its context clearly gives rise to the inference that the sum stated is not the value of the undivided one-half of the property in controversy, but the value of the entire property. But even if it be conceded that the deficiency of the affidavit may be supplied by a resort to the record, we are of opinion that the record establishes that the essential jurisdictional amount does not exist. True, the complaint and amended complaint state amounts from which, if considered alone, it might be possible to conjecture that the jurisdictional amount existed. These pleadings seem, however, not to have been verified, and if they had been their effect would be neutralized by other parts of the record. In the first place, the consideration expressed for the sale made by Antonio Enriquez of the entire property was only eight thousand pesos, and while the amended complaint, in assailing the conveyance, alleged the actual value of the property to have been twenty thousand pesos, the trial court, from the evidence, found that the real value of the property at the time of the sale was fourteen thousand pesos; that is, seven thousand dollars currency of the United States. In the second place, that the rents and profits were greatly exaggerated in the complaint and amended complaint is shown by the fact that only 13,250 pesos was allowed by the court as the value of the use of

one-half of the property while wrongfully withheld, and this amount was subject to be reduced by charging against it the one-half cost of administering the property, including disbursements for repairs, improvements, etc., during such period. In other words, whether we look at the affidavit alone or whether we consider the record as a whole, we think it is demonstrated not only that there is a failure to establish that the requisite jurisdictional amount exists, but moreover it affirmatively appears that such amount is not involved.

Dismissed for want of jurisdiction.

ENRIQUEZ *v.* ENRIQUEZ. (NO. 2.)

APPEAL FROM THE SUPREME COURT OF PHILIPPINE ISLANDS.

No. 25. Argued October 31, 1911.—Decided December 4, 1911.

Where the record shows that the jurisdictional value is not made out by a preponderance of evidence, the appeal will be dismissed. *Red River Cattle Co.* v. *Needham*, 137 U. S. 632.

Under § 10 of the act of July 1, 1902, c. 1369, 32 Stat. 695, this court can only review judgments of the Supreme Court of the Philippine Islands where the value in controversy exceeds $25,000; and in this case it does not appear that the value of real property affected equals that amount.

Appeal from 8 Phil. Rep. 607, dismissed.

THE facts, which involve the jurisdiction of this court of appeals from the Supreme Court of the Philippine Islands, are stated in the opinion.

Mr. Jackson H. Ralston, with whom *Mr. Frederick L. Siddons* and *Mr. Wm. E. Richardson* were on the brief, for appellants.

Mr. Allison D. Gibbs, for appellees, submitted.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

This controversy is substantially between those who were parties of record in Cause No. 24, just decided, *ante*, p. 123. In this action the administrator and the majority of the heirs of Antonio Enriquez assailed a deed of certain property in Manilla executed by Francisco Enriquez as attorney in fact of his father, Antonio, and also a sale of the same property subsequently made to the wife of Francisco Enriquez by the person to whom he had previously conveyed it, both the deeds being assailed on the ground that they were fraudulent simulations. The prayer was that the deeds be held to be void and for a judgment for rents and profits. The court of first instance having decreed in favor of the administrator, the defendants appealed to the Supreme Court of the Philippine Islands, which court reversed the judgment and remanded the cause for further proceedings.

Following a second judgment in favor of the administrator the cause was again taken to the Supreme Court and that tribunal not only again reversed the judgment below but entered one "acquitting the defendants of the complaint." This appeal was then taken, and a motion to dismiss has been made upon the ground that the requisite jurisdictional value is not involved. Contemporaneous with the allowance of the appeal there was filed in the court below an affidavit of Rafael Enriquez, in which he averred "that the real property the title to and possession of which is involved therein exceeds in value the sum of Twenty-five thousand dollars, gold coin of the United States." Thereafter the appellees filed the affidavit of A. B. Powell, chief of the real estate division of the Bureau of Internal Revenue in the city of Manilla, whose duty it is to fix the valuation of real property in the city of Manilla to the effect that he was familiar with the value of

such real property. That the assessed value in Philippine currency of the property in question (land and improvements) was as follows:

For the years 1901 and 1902, 12,236.96 pesos.

For the years 1903 to 1907, 12,582.90 pesos.

For the year 1908, 12,192.60 pesos.

He also swore "that such assessed value was and is the true value of the property during the time mentioned." If both the affidavits be accepted, it plainly results that, considering the value of the property alone, the requisite jurisdictional amount has not been established by the preponderance of evidence. But if the conflict between the two statements be resolved by resort to the record, then we think it affirmatively appears that the requisite value does not exist. At the trial the defendants introduced proof tending to show that the value of the property when originally bought by Antonio Enriquez, as well as at the time when it was conveyed to the wife of Francisco Enriquez, was materially less than the assessed value. Indeed, this proof tended to show that the building on the property was in ruins at the time of the purchase by the wife of Francisco and was therefore practically worthless for rental purposes. This was sustained by proof that the very small sum of $750 was attributed to the building or improvements on the lot in the assessment of 1901. Despite this evidence, no proof then was offered on behalf of the plaintiffs as to the value of the property except that of one witness who expressed the opinion that the property, at the time he testified, was worth about 16,000 pesos, or $8,000 currency of the United States. The demonstration as to the absence of the jurisdictional amount which results from these considerations is not changed by taking into view the question of rents and profits. This conclusion is inevitable, since even if the amount of rents and revenues, that is, the value of the use of the property allowed by the court of first instance, be taken into account

and allowance be made at the same ratio to the date of the judgment appealed from, such sum, when added either to the assessed value or to the value fixed by the plaintiff's own witness at the trial, would be much below $25,000. On this record "we are clear," as was found to be the case in *Red River Cattle Co.* v. *Needham*, 137 U. S. 632, "that the jurisdictional value is not made out by a preponderance of evidence;" and the appeal is therefore

Dismissed.